

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-402

JERMAL DOTSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 24, 2009

APPEAL FROM THE HEMPSTEAD
COUNTY CIRCUIT COURT
[NO. CR-07-446-1]

HONORABLE WILLIAM RANDAL
WRIGHT, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

The appellant was charged in the criminal division of the Hempstead County Circuit Court with the Class “Y” felonies of aggravated robbery, kidnapping, and engaging in violent group activities, as well as with two counts of theft of property. Appellant, who was seventeen years of age when he allegedly committed these offenses, moved to transfer his case to the juvenile division of circuit court. After a hearing, the trial court denied that motion. On appeal, appellant asserts that the trial court erred in so ruling. We affirm.

A prosecuting attorney may, in his discretion, charge a juvenile of fourteen years of age or older in the criminal division of circuit court if the juvenile engages in conduct that, if committed by an adult, would constitute aggravated robbery or kidnapping. Ark. Code Ann. § 9-27-318(c)(2)(C) and (D) (Repl. 2008). On the motion of the court or any party, the court in which the criminal charges have been filed shall conduct a hearing to determine whether to retain jurisdiction or to transfer the case to another division of circuit court. Ark.

Code Ann. § 9-27-318(e). The court shall order the case transferred to another division of circuit court only upon a finding by clear and convincing evidence that the case should, in fact, be transferred. Ark. Code Ann. § 9-27-318(h)(2). Clear and convincing evidence is the degree of proof that will produce in the trier of fact a firm conviction as to the allegation sought to be established. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997). We will not reverse a trial court's determination of whether to transfer a case unless that decision is clearly erroneous. *Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004).

At the transfer hearing, the court must consider all of the factors set forth in Ark. Code Ann. § 9-27-318(g) (Repl. 2008):

- (1) The seriousness of the alleged offense and whether the protection of society requires prosecution as an extended juvenile jurisdiction offender or in the criminal division of circuit court;
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- (3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
- (4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;
- (5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;
- (6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;

- (7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court which are likely to rehabilitate the juvenile prior to the expiration of the juvenile division of the circuit court's jurisdiction;
- (8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;
- (9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (10) Any other factors deemed relevant by the court.

Although the court must make written findings on all of the enumerated factors in deciding whether or not to transfer the case, Ark. Code Ann. § 9-27-318(g), proof need not be introduced against the juvenile on each factor, and the trial court is not required to give equal weight to each of the statutory factors in arriving at its decision. *Otis v. State, supra*.

Here, the record shows that appellant has an extensive juvenile record beginning in 2003, when he was adjudicated delinquent for the offenses of theft of property and harassment. Despite ongoing juvenile rehabilitation services, appellant was again found delinquent in 2004 for residential burglary and criminal mischief, and yet again in 2007 for possession of marijuana and possession of cocaine with intent to deliver. There was testimony from appellant's juvenile probation officer that appellant was "responding well" when she worked with him, and that appellant might still, at this late stage, benefit from juvenile probation, but that this option was foreclosed by appellant's criminal history. There also was testimony from the district juvenile intake officer that he was very familiar with appellant, that appellant had received numerous rehabilitative services over the years, and that, because appellant's crimes had become increasingly violent and because appellant would be eighteen

years of age less than three months from the time of the hearing, the juvenile court system had “just about run out of possibilities” for appellant given the seriousness of the most recent charges against him.

Those charges can be summarized as follows: Appellant, wearing a ski mask and with two female accomplices providing a distraction, approached the victim with a handgun as the victim sat in his vehicle in a residential neighborhood. Appellant then robbed the victim of his money and jewelry and forced the victim to drive him to his bank and retrieve an additional \$500 from an automated teller machine. Appellant held a loaded handgun to the victim’s rib cage during the entire incident. Questioned after the event, appellant stated that he was not sure what he would have done if the victim had resisted. On this record, we cannot say that the circuit judge clearly erred in denying appellant’s motion to transfer to juvenile court.

Affirmed.

VAUGHT, C.J., and GLADWIN, J., agree.